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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

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ALLIANCE FOR THE WILD  
ROCKIES,

Plaintiff,  
vs.

ENVIRONMENTAL PROTECTION  
AGENCY,

Defendant

CV- 17-64-DLC

**DECLARATION OF REBECCA K.  
SMITH**

I, Rebecca Kay Smith, declare as follows:

1. I am an attorney licensed to practice law in state and federal courts in Montana and Idaho, as well as before the Ninth Circuit Court of Appeals. I have been a member of the State Bar of Montana since October 7, 2008. I was admitted to the State Bar of Idaho in April 2010.
2. I obtained my law degree in 2008 from the University of Montana School of Law in Missoula, Montana. I graduated with high honors as Class Valedictorian, and received a Certificate in Environmental and Natural Resources Law. While in law school I served two years, first as a staff member and then as an editor, on the Public Land & Resources Law Review and was a member of the National Moot Court team. In law school, I also published three law review articles on environmental policy issues.
3. In 2008, I also received my master's degree – Masters of Science in Environmental Studies – from the University of Montana Graduate School. My professional graduate portfolio focused on environmental issues in the Northern Rockies.
4. My law practice is primarily focused on public interest environmental litigation. I have worked on numerous cases involving federal environmental law. I have secured successful rulings for my clients in Montana, Idaho, and before the Ninth Circuit. *See e.g. Alliance for the Wild Rockies v. Bradford*, 720 F.Supp.2d 1193 (D. Mont. 2010); *All. for Wild Rockies v. Lyder*, 728 F. Supp. 2d 1126 (D. Mont. 2010); *The Lands Council v. Cottrell*, 731 F.Supp.2d 1074 (D. Id. 2010); *Hapner v. Tidwell*, 621 F.3d 1239 (9th Cir. 2010); *Native Ecosystems Council v. Weldon*, 848 F.Supp.2d 1207 (D. Mont. 2012); *Native Ecosystems Council v. Krueger*, 946 F.Supp.2d 1060 (D. Mont. 2013); *Alliance for the Wild Rockies v. Krueger*, 950 F.Supp.2d 1172 (D. Mont. 2013); *Swan View Coalition v. Weber*, 52 F.Supp.3d 1133(D. Mont. 2014); *Native Ecosystems Council v. Krueger*, 63 F.Supp.3d 1246 (D. Mont. 2014); *Alliance for the Wild Rockies v. U.S. Dept. of Agriculture*, 772 F.3d 592 (9th Cir. 2014); *Alliance for the Wild Rockies v. Marten*, 200 F. Supp. 3d. 1110 (D. Mont. 2016); *Wildearth Guardians v. Dept. of Interior*, 205 F.Supp.3d 1176 (D. Mont. 2016); *Alliance for the Wild Rockies v. Marten*, 2016 WL 6901264 (D. Mont. 2016); *Alliance for the Wild Rockies*

*v. Savage*, 2016 WL 4800870 (9th Cir. 2016); *Alliance for the Wild Rockies v. Marten*, - - - F.Supp.3d - - - -, 2017 WL 2345656 (D. Mont. 2017); *Alliance for the Wild Rockies v. Zinke*, - - - F.Supp.3d - - - -, 2017 WL 3619545 (D. Mont. 2017).

5. I have presented lectures on federal environmental law for the University of Montana School of Law's Public Land and Resources Law Review Conference and Wildlife Law course, the Vermont Law School's Montana Field Study course, and the University of Oregon's Public Interest Environmental Law Conference.
6. In 2018, I received the Kerry Rydberg Award for Excellence in Public Interest Environmental Lawyering from the University of Oregon School of Law Public Interest Environmental Law Conference.
7. I am considered to be a specialist with distinctive skills in federal environmental law by the non-profit environmental community, and my services are highly sought after by that community.
8. As one of a small group of plaintiffs' public interest environmental lawyers in Montana, I am considered to be an expert on market rates for attorney fees for plaintiffs' attorneys in environmental cases in Montana.
9. I have reviewed the primary substantive filings and documents in this case, namely the complaint, stay motions, biological assessment, stipulation of dismissal, and fee brief. I have also discussed the issues and procedural history of this case with counsel. I have also reviewed both counsel's time sheets in this case.
10. Factual & Procedural Background. Prior to filing this suit, on January 24, 2017, Plaintiff sent EPA a Freedom of Information Act request for "[i]nformation relating to any and all documents that are a result of ESA consultation between the EPA and U.S. Fish and Wildlife Service for bull trout and bull trout critical habitat . . ." In response, the EPA stated, "We are unable to provide you with the requested records because the EPA has not engaged in consultation pursuant to Section 7(a)(2) of the [ESA]." After confirming that EPA had not already engaged in Section 7 consultation,

Plaintiff then sent the EPA a 60 Day Notice of Intent to Sue under the ESA requesting Section 7 consultation. EPA did not initiate consultation within 60 days. Plaintiff filed this action on May 16, 2017. After Plaintiff filed this action, EPA initiated Section 7 consultation on bull trout critical habitat, and requested several stays from this Court in order to complete its biological assessment. In January 2018, EPA completed its biological assessment. The biological assessment acknowledges that “the U.S. Environmental Protection Agency (EPA) has identified the federal Endangered Species Act of 1973, as amended (ESA), as an applicable or relevant and appropriate requirement (ARAR) for the six ongoing remedial actions at the Silver Bow Creek/Butte Area (SBCBA) Superfund Site (Site) in southwestern Montana (see Figure 1-1).” The biological assessment “determined that the proposed project May Affect, but is Not Likely to Adversely Affect Columbia River bull trout and/or their critical habitat until active remedial elements in the SBCBA Site are completed.” After the biological assessment was completed, Plaintiff stipulated to dismissal of this case because Plaintiff had received the full relief it had requested.

11. The facts of this case render “appropriate” a fee award under the ESA under the ESA catalyst theory. Under the catalyst theory, a plaintiff must receive some of the benefits it sought and there must be a causal relationship between the litigation and that relief. Additionally, the relief must be legally required. Both requirements are easily met here. Plaintiff received all of its requested relief here because EPA produced a biological assessment; the litigation caused the relief because EPA did not consult prior to this litigation; and the relief was legally required because EPA concedes its project “may affect” bull trout critical habitat, which means that consultation is legally required under the ESA.
12. My expert opinion in this case is that counsel have incurred a reasonable number of hours in this case at a reasonable market rate. Mr. Bechtold is a well-respected environmental plaintiff’s attorney who has litigated dozens of successful cases. Mr. Bechtold has practiced law for over 17 years. Similarly, Ms. Akland has already litigated or assisted in litigation of seven federal environmental cases in her three years of practice, and she is well-respected in the environmental plaintiff’s community. Mr. Bechtold’s rate is \$365/hour in 2016, \$390/hour in 2017, and \$415/hour in 2018. Ms. Akland’s

rate is \$200/hour in 2016, \$225/hour in 2017, and \$250/hour in 2018. These rates are reasonable and consistent with the market rates in environmental cases for plaintiffs' attorneys with comparable reputation, experience, and skill. There is a very small pool of public interest plaintiff's environmental attorneys in Montana who are willing and qualified to litigate federal environmental cases. These rates reflect not only expertise and reputation, but also the very limited availability of qualified and available counsel. The rates reflect a reasonable increase of \$25/year, an increase that has been approved by the Ninth Circuit. *Pollinator Stewardship Council v. U.S. EPA*, 2017 WL 3096105 at \*6 (9th Cir 2017). These rates are also consistent with the rates awarded by this Court in *Nance v. Jewell*, CV 06-125-BLG-DLC, Docs. 152, 139-7, 139-9 (D. Mont.), in which an attorney with 39 years experience was awarded \$500/hour and an attorney with 5 years experience was awarded \$300/hour in a federal environmental case. Mr. Bechtold expended 23.3 hours on this case as of the date of this declaration. Ms. Akland has expended 30.1 hours on this case as of the date of this declaration. In my experience, this number of hours is not only reasonable, but also extremely efficient considering that Plaintiff received complete and significant relief in this case.

13. In preparing this expert fee declaration, I expended 2.4 hours at the rate of \$355/hour. My bill for this service is \$852.00.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th Day of February, 2018.

A handwritten signature in black ink, appearing to read 'Rebecca K. Smith', written over a horizontal line.

Rebecca K. Smith  
Expert Fee Declarant